



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

May 6, 1996

Mr. Charles D. Olson
Haley & Davis, P.C.
Bank One Plaza, Suite 600
510 North Valley Mills Drive
Waco, Texas 76710

OR96-0659

Dear Mr. Olson:

You seek reconsideration of Open Records Letter No. 96-0119 (1996), in which this office determined that the Texas Open Records Act, Government Code chapter 552, required the Housing Authority of the City of Killeen (the "housing authority") to make certain information available to the requestor. We have assigned your request for reconsideration ID# 38740.

On August 30, 1994, the housing authority received an open records request for information relating to financial settlements made by the Texas Municipal League to a former housing authority employee and a former housing authority resident. On September 7, 1994, we received your request for an attorney general opinion in reference to the requested information. In your request for an opinion, you asserted that the requested information is excepted under section 552.101 of the Government Code. However, you did not submit to our office the requested information that you are required to provide under section 552.301(b). See Gov't Code § 552.303 (governmental body must submit specific information requested to attorney general). The time limitation found in section 552.301 is an express legislative recognition of the importance of having public information produced in a timely fashion. *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.--Austin 1990, no writ). Pursuant to section 552.303(c), our office notified you that you had failed to submit the records as required by section 552.301(b).¹

¹Section 552.303 states in pertinent part: Failure to comply with these requirements will result in the legal presumption that any information subject to the open records request and that in any way relates to or is included in this notification is presumed to be public information. *Id.* § 552.303(e).

Accordingly, as provided by section 552.303(e), the records subject to the request for information were presumed to be public information. This presumption of openness could only be overcome by a compelling demonstration that the information should not be made public. See *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.--Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to Gov't Code § 552.302); Open Records Decision Nos. 319 (1982) and 150 (1977) (presumption of openness overcome by a showing that the information is made confidential by another source of law or affects third-party interests).

We have reviewed your request for reconsideration and the submitted conciliation agreement. On reconsideration, you have submitted the requested records. You have provided us with an explanation letter re-asserting the applicability of section 552.101, additionally raising section 552.103 as an exception.²

Section 552.101 protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Industrial Found. of the South v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). You state that the housing authority operates under the direction and supervision of the United States Department of Housing and Urban Development ("HUD"). You further state that the housing authority has been directed by HUD not to disclose the requested information, as the information is confidential under federal law. See Gov't Code § 552.352 (the distribution of confidential information is a criminal offense). The housing authority asserts that the submitted record should be withheld pursuant to Section 3610(b)(4) and (d)(1) of title 42 of the United States Code, which sets out the bounds of confidentiality with regards to conciliation agreements and matters "said or done in the course of conciliation."

Generally, under the Open Records Act, a governmental body may not withhold information, including settlement agreements, simply because it has agreed to do so. Open Records Decision No. 444 (1986) at 6. However, in this instance federal law governs and not the Open Records Act. Specifically, section 3610(b)(4) of title 42 of the United States Code provides that "[E]ach conciliation agreement shall be made public unless the complainant and respondent otherwise agree and the Secretary determines

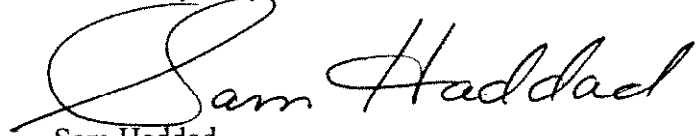
²Under the Open Records Act, all information held by governmental bodies is open unless the information falls within one of the act's specific exceptions to disclosure. The act places on the custodian of records the burden of proving that records are excepted from public disclosure. If a governmental body fails to claim an exception, or explain how that exception applies, the exception is ordinarily waived unless the information is deemed confidential under the act. See Gov't Code §552.301(b)(1) (governmental body that requests attorney general decision must submit written comments stating the reasons why the stated exceptions apply) (Emphasis added); see also Attorney General Opinion JM-672 (1987). Therefore, we will not address your assertion that section 552.103 protects the requested information, since the exception was not raised in your original request for a ruling.

that disclosure is not required to further the purposes of this subchapter." *See* 42 U.S.C. §§ 3610(b)(4) and (d)(1). Therefore, pursuant to federal law the conciliation agreement is confidential, since the complainant and respondent signed it.

On reconsideration, after reviewing the submitted record, we conclude that you have shown compelling reasons why the information at issue should be withheld, since the information is made confidential by law because of a federal statute. *See* 42 U.S.C. § 3610 (b-d). Therefore, we agree that the conciliation agreement should be withheld. Accordingly, we agree to withdraw our letter ruling in Open Records Letter No. 96-0119 (1996).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink that reads "Sam Haddad". The signature is fluid and cursive, with the first name "Sam" being more prominent than the last name "Haddad".

Sam Haddad
Assistant Attorney General
Open Records Division

SH/rho

Ref: ID# 38740

Enclosures: Submitted documents

cc: Jen Sansbury, Reporter
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(w/o enclosures)

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